record, the Court held that the confession was involuntary, and stated, in dicta, that it was not limited only to considering evidence introduced before the admission of the confession. That case, which was premised on a due process violation, provides no authority for the proposition that a defendant may raise a new theory for suppression for the first time on appeal. *Brown* similarly involved the issue of whether a conviction based solely on a confession induced by torture violated due process.

c. In any event, the evidence in this case was lawfully seized. Even if petitioner did not understand Trooper Dean's questions, the record plainly demonstrated that Florez did. The police may obtain consent from a third party who possesses common authority over the area or item to be searched. *United States* v. *Matlock*, 415 U.S. 164 (1974). In addition, third-party consent is effective if the police reasonably believe that the third party had common authority over the area to be searched. *Illinois* v. *Rodriguez*, 497 U.S. 181 (1990).

Applying these principles, the courts of appeals have repeatedly held that the driver of a car has apparent authority to consent to a search of the vehicle. See, *e.g.*, *United States* v. *Crain*, 33 F.3d 480, 484 (5th Cir. 1994) ("A person who has joint control over an automobile may give valid consent to its search."), cert. denied, 513 U.S. 1169 (1995); *United States* v. *Eldridge*, 984 F.2d 943, 948 (8th Cir. 1993) (driver of vehicle has authority to consent to full search of vehicle); *United States* v. *Garcia*, 897 F.2d 1413, 1419 (7th Cir. 1990) (same); *United States* v. *Morales*, 861 F.2d 396, 399 (3d Cir. 1988) (driver of vehicle, rented in passenger's name, has authority to consent to search of vehicle). The troopers therefore reasonably relied on Florez's consent to search the minivan. For the same reason, even if petitioner did not understand that he was free to leave

after Trooper Dean returned the documents and issued the warning, Florez willingly engaged in a consensual encounter with the troopers and the search was the result of her consent.

Finally, while petitioner may have been unable to speak English, there was evidence in the record that he understood it. See Pet. App. 30 n.1. Not only did he appropriately respond to Trooper Dean's request for his driver's license, but he also nodded his head in assent after Trooper Dean asked for permission to search the car.

2. Petitioner next contends (Pet. 9-11) that he was unlawfully detained after Trooper Dean returned the documentation and warning citation to Florez. Petitioner's claim in the court of appeals was primarily limited to whether, in light of his inability to speak English, he understood that he was free to leave. Pet. C.A. Br. 11. For that reason, the court of appeals did not review the district court's finding that petitioner was not unlawfully detained. Review by this Court under those circumstances is unwarranted. Cf. *Matsushita Elec. Indus. Co.* v. *Epstein*, 516 U.S. 367, 379 n.5 (1996) (this Court "generally do[es] not address arguments that were not the basis for the decision below").

In any event, petitioner's fact-bound challenge to the stop is without merit. As this Court has explained, "a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business,' *California* v. *Hodari D.*, 499 U.S. 621, 628 (1991), the encounter is consensual and no reasonable suspicion is required." *Florida* v. *Bostick*, 501 U.S. 429, 434 (1991). The test the Court has developed to distinguish seizures from consensual encounters is whether, "in view of all of the circumstances surrounding the inci-

dent, a reasonable person would have believed that he was not free to leave." *Michigan* v. *Chesternut*, 486 U.S. 567, 573 (1988) (quoting *United States* v. *Mendenhall*, 446 U.S. 544, 554 (1980) (opinion of Stewart, J.)). The police are not required to inform the vehicle's occupants that they are free to leave before seeking their consent, *Ohio* v. *Robinette*, 519 U.S. 33, 35, 40 (1996), although in this case Trooper Dean did precisely that.

The district court correctly concluded that Trooper Dean's statements made clear that petitioner and Florez were free to leave after he returned their documents to them. Moreover, the record contained no evidence of coercion. In those circumstances, the encounter was consensual and the consent was not the product of an unlawful detention.

3. Petitioner also contends (Pet. 11-12) that this Court's review is necessary to settle the question whether the scope of a general consent to search encompasses removing molding and paneling from a vehicle. Petitioner's arguments lack merit and involve only the application of well-established legal principles to the particular facts of this case.

"The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness." *Florida* v. *Jimeno*, 500 U.S. 248, 251 (1991) (internal quotation marks and citations omitted). The proper question is "what would the typical reasonable person have understood by the exchange between the officer and the suspect." *Ibid.* It is generally reasonable for police officers to conclude that a motorist's general consent to search his car includes all areas that might contain drugs when the officers have told the motorist that they are looking for drugs. *Id.* at 251-252.

Courts of appeals have approved searches in which a motorist consents generally to the search and the police remove, without destroying, components of the vehicle. See, *e.g.*, *United States* v. *Zapata*, 180 F.3d 1237, 1243 (11th Cir. 1999) (holding that the search of a vehicle's interior door panel was within the scope of the defendant's general consent to search for narcotics, weapons, or money because the door panel could contain such items); *United States* v. *Flores*, 63 F.3d 1342, 1362 (5th Cir. 1995) (unscrewing two screws and removing two vent covers from the interior panels was within scope of general consent), cert. denied, 519 U.S. 825 (1996); *United States* v. *Martel-Martines*, 988 F.2d 855, 858 n.3 (8th Cir. 1993) (using screwdriver to puncture small hole in metal compartment hidden underneath truck bed in order to remove it was reasonable); but see *United States* v. *Garcia*, 897 F.2d 1413, 1419-1420 (7th Cir. 1990) (opening door panels exceeded scope of consent, but evidence not suppressed because officers had probable cause to search).*

The Tenth Circuit correctly determined that the search in this case fell within the scope of Florez's consent. Trooper Dean first asked Florez whether there were drugs or guns in the car, and then obtained her consent to search the car. It was therefore reasonable for the officers to search all areas in which drugs could be hidden. See *Zapata*, 180 F.3d at 1243 ("Numerous cases in our sister circuits demonstrate that money and drugs are frequently

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* Petitioner also cites (Pet. 11) *United States* v. *Strickland*, 902 F.2d 937 (11th Cir. 1990), to support his position that the police may not destroy property during a general consent search. Because property was not destroyed in the case below, *Strickland* is inapposite. The Eleventh Circuit distinguished *Strickland* in *Zapata*, 180 F.3d at 1243, in which the court upheld the opening of a secured compartment in a car that did not damage the interior door panel.

stored behind interior panels in an automobile."). Although the Seventh Circuit found to the contrary, *Garcia*, 897 F.2d at 1419, its observation that police may not reasonably expect to find drugs behind door panels is belied by the experience of law enforcement officers referenced in cases from other circuits. Indeed, cases originating in the Seventh Circuit confirm the same point. See *Ornelas* v. *United States*, 517 U.S. 690, 692-693 (1996) (describing officer's discovery in Milwaukee of two kilograms of cocaine hidden behind a door panel in an older model General Motors car of the type that is "a favorite of drug couriers because it is easy to hide things in them").

Petitioner also contends (Pet. 11-12) that this Court should consider whether a motorist's inability to observe the actions of the police during the search constitutes a Fourth Amendment violation. This case does not present the proper vehicle to resolve that question because petitioner did not press that issue below and the district court made no factual finding on whether either petitioner or Florez could view the search from their vantage points.

4. Lastly, petitioner argues for the first time in this Court (Pet. 12-13) that his sentence should be vacated because the district court sentenced him in violation of *United States* v. *Booker*, 125 S. Ct. 738 (2005). In *Booker*, this Court held that the Sixth Amendment, as construed in *Blakely* v. *Washington*, 542 U.S. 296 (2004), applies to the federal Sentencing Guidelines. *Booker*, 125 S. Ct. at 748-756 (Stevens, J., for the Court). In answering the remedial question in *Booker*, the Court applied severability analysis and held that the Guidelines are advisory rather than mandatory, and that federal sentences are reviewable for unreasonableness. *Id.* at 757-769 (Breyer, J., for the Court). Accordingly, the appropriate disposition is to grant the writ of certiorari, vacate the judgment of the court of

appeals, and remand the case for further consideration in light of *Booker*. The court of appeals can then decide what effect, if any, those decisions have on petitioner's sentence, taking into account any applicable doctrines of waiver, forfeiture, and harmless error. See *id.* at 769.

CONCLUSION

On the fourth question presented, the petition for a writ of certiorari should be granted, the judgment vacated, and the case remanded for further consideration in light of *United States* v. *Booker*, 125 S. Ct. 738 (2005). In all other respects, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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